



BOX ELDER COUNTY
ATTORNEY'S OFFICE

CRIMINAL PROSECUTION
POLICIES AND PROCEDURES
MANUAL

NOVEMBER 2021

The [prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

JUSTICE GEORGE SUTHERLAND
Berger v. U.S., 295 U.S. 78 (1935)

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MISSION STATEMENT

The mission of the Box Elder County Attorney's Office is to ensure the safety of the community by vigorously prosecuting criminal offenses, compassionately assisting the victims of crime, and zealously pursuing the interests of justice. We seek to rehabilitate and reform offenders whenever possible, so long as the impact to the community will be best served. We strive for straightforward, honest, and effective communication with defense attorneys and unrepresented parties alike. It is our primary duty to see that no innocent person should be punished and that no guilty person should go free. To ensure rigorous adherence to our mission, we strive for the highest standard of ethical responsibility and an unwavering adherence to the Utah Rules of Professional Conduct (in particular, rule 3.8).

INTERACTION WITH LAW ENFORCEMENT

The Box Elder County Attorney's Office recognizes the critical role that law enforcement officers play in the investigation and prosecution of criminal offenders. We seek to constantly improve and solidify our relationships with individual officers and agencies. To ensure a good, working relationship, attorneys will regularly consult with officers about cases and, whenever possible, seek their input on potential resolutions of cases.

Understanding the necessity of open and effective communication with law enforcement, we place high importance on regularly meeting with officers and making ourselves available for consultation at any time. We commit to open and civil dialog with officers understanding that, although disagreement is occasionally inevitable, professionalism and respect for the officer should never be compromised.

We encourage the pursuit of excellence within the law enforcement community by acknowledging an officer's particularly exceptional work and will ensure that such an officer will be given due credit. In particular, attorneys will inform an officer's superior through written letter of their outstanding work as often as is warranted.

We recognize that a law enforcement officer's time is valuable and seek to provide as much notice as possible for the scheduling and canceling of hearings and trials wherein an officer may be subpoenaed to attend or testify.

INTERACTION WITH JUDGES

The Box Elder County Attorney's Office recognizes the difficult and important role of judges. We seek to maintain and preserve the integrity of the bench by addressing all judges with respect and deference at all times. We maintain that complete honesty with the tribunal is of critical importance, even when such frankness and honesty may negatively impact a case or detrimentally effect a witness or victim.

We recognize that reasonable minds may differ and are willing to accept an order or judgment of the court, even if it is adverse. We will pursue an appeal or reconsideration of a judge's decision only when there is a significant interest in doing so (*i.e.* grave misapplication of the law, protection of victims, to avoid setting a troublesome precedent, etc.) and not merely for personal vindication.

In particular, we will strictly adhere to rules 3.3 (*Candor toward the tribunal*) and 4.1 (*Truthfulness in statements to others*) of the Utah Rules of Professional Conduct.

INTERACTION WITH ATTORNEYS

The Box Elder County Attorney's Office seeks to cultivate a relationship of trust, candor, and mutual respect with opposing attorneys. Understanding the need for an adversarial system of justice, we recognize that reasonable minds can differ and will avoid becoming emotionally invested or making any case personal. In the event that a relationship with opposing counsel becomes hostile, despite efforts to prevent such from happening, we are committed to maintaining a higher standard of civility and professionalism than that with which we are shown. In particular, we will strictly adhere to rules 3.4 (*Fairness to opposing party and counsel*) and 4.1 (*Truthfulness in statements to others*) of the Utah Rules of Professional Conduct.

INTERACTION WITH VICTIMS

The Box Elder County Attorney's Office resolves to compassionately serve the victims of crime in all cases by working closely with the victim advocates and giving victims the time and attention that they deserve. All communication with victims will be with sensitivity and respect, ensuring that they feel that their input is valued and without judgment.

In particular, we commit to seek input from victims about potential plea deals and resolutions of cases, giving significant consideration to their thoughts, feelings, concerns, and desires regarding any potential outcome. With the assistance of the victim advocates, we will keep victims informed of any scheduling changes, evidentiary complications that may arise, factual updates, or other important information that effects the prosecution of a case.

We will consult with victims and schedule, to the extent possible, all trial settings, hearings, and sentencings at the victims' convenience. We will give timely notice of all requests for expungements and 402 reductions and will seek victims' input before agreeing to such requests.

We will always avoid blaming or shaming the victim in any interaction with them. We will not minimize a defendant's conduct or make a victim feel like their case is in any way insignificant. Additionally, we will always speak honestly with victims and will avoid making any promises, setting unrealistic expectations, or creating false hope.

We will seek restitution to the fullest extent possible and as allowed by law.

In particular, we will adamantly respect and protect victims' rights as provided in the Utah Constitution (Art. I, § 28), the Victims' Bill of Rights (Utah Code Ann. § 77-37-3 & -4), the Rights of Crime Victims Act (Title 77, Chapter 38), and the Crime Victims' Restitution Act (Title 77, Chapter 38A).

The Box Elder County victim advocates are expected to work closely with victims to ensure that all victims have an opportunity to meaningfully participate in the criminal case. The victim advocate is expected to make appropriate referrals and applications to the Utah Office for Victims of Crimes for reparations and counseling. Victims should also be made aware of other local services such as the New Hope Crisis Center and other statewide resources for victims.

INTERACTION WITH DEFENDANTS

The Box Elder County Attorney's Office recognizes that a prosecutor's role as a minister of justice demands that we dutifully protect and respect a defendant's constitutional rights just as vigorously as we seek convictions and accountability for apparent violators and perpetrators. To ensure a fair and unbiased outcome for a defendant, we will ensure that the accused has been advised of the right to, and the procedure for, obtaining counsel and has been given reasonable opportunity to consult with or obtain counsel.

In the event that a defendant proceeds *pro se*, we will make extra effort to ensure that such a defendant fully understands his or her rights, the presumption of innocence, the prosecution's burden of proof, and any known potential consequences of a proposed plea bargain or conviction. We will treat *pro se* defendants with fairness at all times and will provide the same plea offer to an unrepresented person as we would to defense counsel.

INTERACTION WITH THE MEDIA

The Box Elder County Attorney's Office recognizes the public's interest and right to be informed about persons and offenses committed within the county. As such, we seek to inform the public, to the extent feasible, by being accessible to the media. We will cooperate with requests from news outlets to the extent reasonable and proper.

In the event that a prosecutor agrees to provide comments to a media outlet, the prosecutor will provide only that information which is or should be public knowledge. The prosecutor will avoid making any disparaging remarks about another attorney, defendant, or a judge and will ensure that all comments are civil and appropriate.

In the event that a media outlet seeks to contact a prosecutor to inquire about a case but the prosecutor elects not to provide comment, the prosecutor will inform the media outlet of such determination. We recognize that non-response to a media outlet's request for comment or

information may create mistrust and fails to fulfill our obligation to inform the community. At a minimum, a prosecutor should inform the media outlet that the Box Elder County Attorney's Office will not be providing comment at this time.

Whenever a media outlet, attorney, defendant, or other such individual makes a misstatement of fact or law pertaining to the case, the prosecutor should, when appropriate, correct such statement to ensure the proper and adequate dissemination of information.

In particular, we will strictly adhere to rules 3.6 (*Trial publicity*) and 3.8(e) (*Special responsibilities of a prosecutor*) of the Utah Rules of Professional Conduct.

RELEASE OF INFORMATION

The Box Elder County Attorney's Office will not release any reports, documents, statements, media files, or other such information at any time to any person, attorney, group, or organization except as provided in the section titled "Discovery" below. Rather, any person requesting such information should be directed to the responsible agency for the filing of a GRAMA request.

Case submission sheets, discovery verification forms (including assisting agency forms), declination letters, and follow-up letters are considered protected records under Utah Code § 63G-2-305(10), (18), and (23)(b). Accordingly, these records will not be released, even pursuant to a GRAMA request.

Attorneys that were privately retained by a defendant, victim, or other involved individual who are not representing any of those parties in the criminal matter will be directed to the responsible agency for the filing of a GRAMA request. However, nothing in this section prohibits a victim or a defendant from delivering any properly obtained documents or information to a private attorney themselves.

After a defendant has been sentenced and the case is closed, the Box Elder County Attorney's Office will not release any reports, documents, statements, media files, or other such information. Any person (including a defendant or attorney) seeking such information should be directed to the responsible agency for the filing of a GRAMA request.

Notwithstanding this Release of Information policy, the Box Elder County Attorney's Office will provide police reports and a victim's written statement to the victim at any time at no charge. However, to ensure the integrity of the case and the preservation of evidence, we will not release any media files (i.e. videos, photos, audio, etc.) to a victim while a case is pending. We will release any media files to a victim after a case is adjudicated and the time for an appeal has expired.

REDACTIONS

Depending on the person requesting the information, any reports, documents, statements, media files, or other such information should be properly redacted prior to being released. A copy of the redacted document should be uploaded and maintained in digital case file.

The Box Elder County Attorney's Office will make all necessary redactions digitally or manually to ensure that the redacted information cannot be otherwise accessed or disclosed. In making these redactions, the Box Elder County Attorney's Office adheres to the guidelines below.

DEFENDANT

The Box Elder County Attorney's Office will release all documents to a defendant in accordance with the policies contained in the "Discovery" section. However, any identifying information of any victims and witnesses will not be provided. In particular, all addresses, phone numbers, social security numbers, driver's license numbers, date of birth, and employment information will be redacted.

In the event that a document contains the name of a minor, we will redact the name leaving only the minor's first and last initial. To ensure consistency, we will redact minors' names even if the minor is the defendant's child or relative.

DEFENSE COUNSEL

The Box Elder County Attorney's Office will release all documents to defense counsel without any redactions in accordance with the policies contained in the "Discovery" section.

VICTIMS

The Box Elder County Attorney's Office will not provide any identifying information of a defendant or witness other than the defendant's or witnesses' names. In particular, all addresses, phone numbers, social security numbers, driver's license numbers, date of birth, and employment information will be redacted.

In the event that a document contains the name of a minor, we will redact the name leaving only the minor's first and last initial. To ensure consistency, we will redact minors' names even if the minor is the victim's child or relative.

If the victim is minor, we will consider the minor's parent or guardian the victim for purposes of this policy, unless the parent or guardian is the defendant in the case, is complicit or implicated in the case, or is supportive of the defendant in the case.

Notwithstanding this policy, we will not release information to a victim's parent or guardian if there exist reasonable grounds to believe that release of the information to the parent or guardian will compromise the safety of the victim, the defendant, or any other witnesses. Furthermore, we will not release any information if there is a legitimate concern that the release will compromise the integrity of the case.

VICTIM ATTORNEY

The Box Elder County Attorney's Office will release all documents to a victim's attorney without any redactions.

PROSECUTION OFFICES, LAW ENFORCEMENT, AND OTHER GOVERNMENT AGENCIES

In order to achieve greater success in prevention and detection of crime and apprehension of criminals, the Box Elder County Attorney's Office will provide information without redaction to other prosecution offices (both within and outside the state), other law enforcement agencies (both within and outside the state), federal law enforcement agencies, the Utah Division of Child Protective Services, the Children's Justice Center, and any other government agency where the sharing of information will not unduly burden or compromise a victim's cooperation and participation and will facilitate the safety of the community and ensure the interests justice.

PROSECUTION OF CRIMINAL OFFENSES

The Box Elder County Attorney's Office recognizes the broad power entrusted to a prosecutor and does not take lightly the reality that individuals' lives are significantly disrupted by the prosecution of criminal charges. We understand the immense power bestowed upon a prosecutor to utilize law enforcement and call upon the power of government to enforce and enable prosecution of criminal offenses. We strive to ensure that such power will only be utilized to the extent reasonable and only when absolutely necessary. Recognizing that effective prosecution inevitably requires that a prosecutor have the ability to exercise discretion in charging and prosecuting cases, we nevertheless acknowledge that a baseline standard is necessary for the sake of consistency and accountability. These standards are as follows.

ASSIGNING CASES

All Juvenile and Justice Court cases are assigned to the prosecutor responsible for those courts. All cases involving a class A misdemeanor or higher will be randomly assigned to a District Court prosecutor. If a prosecutor is already assigned a case for a particular defendant on a pending case, any other submitted cases should be assigned to the same prosecutor.

A case should be reassigned to a different prosecutor if the originally assigned prosecutor becomes aware of a potential conflict of interest. Such conflicts include, but are not limited to, the following:

- (1) The originally assigned prosecutor is related to the defendant;
- (2) The originally assigned prosecutor has an association with the defendant that makes it particularly uncomfortable or would be difficult to maintain objectivity, fairness, and consistency with other similar cases;

- (3) The defendant is a victim in another case in which the originally assigned prosecutor is currently prosecuting; or
- (4) Any other conflict that would be a violation of the Utah Rules of Professional Conduct, would cast doubt on the efficacy of any resolution or outcome, or would create the appearance of impropriety.

SCREENING CASES

When screening cases are submitted for prosecution, a prosecutor will review all pertinent reports, witness statements, and evidence before making any charging decisions. The assigned prosecutor has discretion about whether to file charges or not. In exercising this discretion, a prosecutor should consider the following non-exclusive factors:

- (1) the strength of the case;
- (2) the prosecutor's doubt that the accused is, in fact, guilty;
- (3) the extent or absence of harm caused by the offense;
- (4) the impact of prosecution or non-prosecution on the public welfare;
- (5) the background and characteristics of the offender, including any voluntary restitution or efforts at rehabilitation;
- (6) whether the authorized or likely punishment or collateral consequences are disproportionate in relation to the particular offense or the offender;
- (7) the views and motives of the victim or complainant;
- (8) the improper conduct by law enforcement, if any;
- (9) unwarranted disparate treatment of similarly situated persons;
- (10) potential collateral impact on third-parties, including witnesses or victims;
- (11) cooperation of the offender in the apprehension or conviction of others;
- (12) the possible influence of any cultural, ethnic, socioeconomic or other improper biases;
- (13) changes in law or policy;
- (14) the fair and efficient distribution of limited prosecutorial resources;
- (15) the likelihood of prosecution by another jurisdiction; and
- (16) whether the public's interest in the matter might be appropriately vindicated by available civil, regulatory, administrative, or private remedies.

In exercising discretion to file and maintain charges, the prosecutor should not consider:

- (1) partisan or other improper political considerations;
- (2) hostility or personal animus towards a potential subject or defense counsel;
- (3) bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, gender identity, or socioeconomic status.

If, after an adequate review of the available and pertinent evidence, the prosecutor determines that there is a reasonable probability of conviction at trial on a particular charge, then a prosecutor is justified in filing that charge.

Prosecutors should screen cases as soon as possible. Ideally, cases will be screened no later than 60 days from the date of receiving the case. Cases submitted for screening involving felony sexual abuse, death, or serious injury should take priority over all other cases.

DECLINING CASES

If a prosecutor is unsure or hesitant to file charges, the prosecutor should seek a second opinion from at least one other attorney in the Box Elder County Attorney's Office before making any decision. If, after a comprehensive review of the facts and evidence, a prosecutor has determined that charges are not warranted, the prosecutor will decline the case.

If the case involves allegations of a declination of all felony sexual offenses submitted for charges, the assigned prosecutor must have another prosecutor in the office review the case as well. If both prosecutors disagree about the filing decision, then the County Attorney will review the case as well to assist in making a determination. If it is ultimately determined that the case should be declined, then the prosecutor and victim advocate should personally meet with the victim(s) to explain why charges against the alleged perpetrator will not be pursued.

In all declined cases, the prosecutor will send a Declination Letter informing the responsible officer of the prosecutor's intent to decline the case which should include enough detail to provide a clear explanation supporting the decision. The prosecutor will include in the letter an instruction that if the officer disagrees with the declination or would like to discuss the case further, the officer should contact the prosecutor within 14 days.

In the event that an officer wants to meet with a prosecutor to discuss reconsideration of the declination, the prosecutor will accommodate such request and meet with the officer as soon as is convenient. If after meeting with the officer there is disagreement about the filing of charges, the prosecutor should seek a second opinion from at least one other prosecutor in the Box Elder County Attorney's Office before making a final decision.

Ultimately, the County Attorney has the final say over any charging decision.

FOLLOW-UP

If a prosecutor feels that additional information is needed before making a charging decision, the prosecutor may send a letter to the responsible officer requesting follow-up. The letter should specify the information or evidence needed and why such information or evidence is necessary for the case. If no follow-up information is received after 90 days, the prosecutor will send a declination letter as discussed in the "Declining Cases" section above.

Alternatively, a prosecutor may request that the Box Elder County Attorney's Office investigator complete any follow-up in lieu of sending a follow-up letter to the responsible officer. A prosecutor should request assistance from the investigator if doing so would not encroach on the responsible officer or if doing so will create animosity or mistrust with the responsible officer.

DISMISSING CASES

In the event that more information or evidence becomes available after a case has been filed that casts legitimate doubt on whether there would be a reasonable likelihood of conviction at trial for a particular charge, such charge should be dismissed as soon as possible. If reasonable given the circumstances, the prosecutor and/or victim advocate should inform any victims about the decision to dismiss prior to so doing.

PROSECUTION OF JUVENILE CRIMINAL OFFENSES

The juvenile prosecutor is expected to work closely with the juvenile probation office to determine whether delinquent acts committed by juveniles should be resolved by non-judicial adjustment or through formal adjudication. These determinations should take into account the standards for screening set forth in the "Screening Cases" section on page 8. In determining whether to prosecute a juvenile in the District Court, the juvenile prosecutor must comply with the statutory requirements contained in Title 80, Chapter 6, Part 5 of the Utah Code. In determining whether to prosecute a juvenile in the District Court, the juvenile prosecutor will consider the following non-exclusive factors:

- (1) the best interests of the juvenile offender;
- (2) the age of the offender;
- (3) the safety of victims, witnesses, and the community;
- (4) the seriousness of the offense;
- (5) whether the offense was committed in an aggressive, violent, premeditated, or willful manner;
- (6) the history of the juvenile offender; and
- (7) the likelihood of rehabilitation and the availability of rehabilitative resources.

DISCOVERY

The Box Elder County Attorney's Office recognizes the critical importance of providing complete and comprehensive discovery to a defendant as quickly as possible. As such, we will strive to strictly adhere to the discovery requirements in Rule 16 of the Utah Rules of Criminal Procedure and to abide by the standard of disclosure of exculpatory evidence established in *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny.

Nevertheless, discovery will not be provided to an attorney until a notice of appearance and a discovery request are filed with the court and payment for the discovery is received. Public defenders appointed by the court are not expected to file a notice of appearance and will not be charged for discovery. Although we encourage public defenders to file a discovery request with the court, we will provide all discovery regardless of whether such a request is filed. Pro se defendants are required to file a discovery request with the court or directly with the Box Elder

County Attorney's Office. The Box Elder County Attorney's Office will make discovery forms available to pro se defendants through its website.

We recognize that it is our obligation to ensure that all discovery is collected from all involved law enforcement officers and other government agencies. Discovery obligations ultimately fall on the prosecutor's shoulders. As such, prosecutors should be vigilant throughout the case in checking and ensuring that all reports, evidence, and statements have been compiled and provided to the defense.

CASE SUBMISSION REQUIREMENTS

All officers submitting cases for review of charges are required to submit a completed Case Submission form provided by our office. All boxes must be checked and the form signed, otherwise the case will be rejected and not referred to the prosecutor for screening. It is our expectation that officers will not submit a case until all investigation is completed, all evidence is gathered, and all lab testing is completed and results are obtained. Officers are expected to be thorough and deliberate in submitting cases for screening by ensuring that all documents, evidence (other than physical evidence held in the agency's evidence room), and videos from every officer in their *own* agency are included in the case submission. Officers should also be sure to list all assisting officers on the Case Submission form. If it is discovered that the case submission is incomplete, the assigned prosecutor will alert the submitting officer and his or her superior explaining the issue. The purpose of this contact is to create awareness of the problem in an effort to ensure better compliance in the future.

DISCOVERY FOR CITATIONS

Officers are not expected to submit a Case Submission form for cases that were initiated by a citation. If a case that was initiated by a citation is set for a pretrial conference, then legal secretaries at the Box Elder County Attorney's Office will request discovery from the agency. In providing the discovery, officers must also submit a Discovery Verification form with all boxes checked and the form signed.

DISCOVERY FOR PROBABLE CAUSE ARRESTS

Due to the expedited time frame for filing charges, officers are not expected to initially submit a Case Submission form or Discovery Verification form. However, officers are expected to provide as much discovery as possible and continue to provide additional discovery as soon as it becomes available. The Box Elder County Attorney's Office will request a Discovery Verification form from the responsible officer's agency prior to a preliminary hearing (if not waived) or when a case is set for a trial.

DISCOVERY FROM ASSISTING AGENCIES

Based on the officers listed on a Case Submission or Discovery Verification form, legal secretaries at the Box Elder County Attorney's Office will then contact the assisting agencies and obtain any

discovery available from those agencies. All assisting agencies are required to submit an Assisting Agency Discovery Verification form with all boxes checked and the form signed. If an assisting agency fails to provide a completed form, the case may be dismissed or denied. Before doing so, the Box Elder County Attorney's Office will warn the assisting agency and inform the main officer's agency in an effort to get compliance from the assisting agency.

SOFT PRE-SCREENING

Once a case is submitted for review of charges, legal secretaries at the Box Elder County Attorney's Office will do a soft pre-screening which consists of a brief review of the type of case submitted and a quick check for any documents and evidence that are typically expected for such a case. Legal secretaries are not expected to extensively read reports or review evidence. If a legal secretary discovers that a case submission is incomplete, the case may be rejected and a request for a complete case submission should be made to the agency or officer.

DISCOVERY OBLIGATION REVIEW

Once a case is set for a trial, the Box Elder County Attorney's Office will conduct a "Discovery Obligation Review" to determine whether any discovery remains unaccounted for and will immediately seek to collect any discovery that is determined to be missing. Typically, a legal secretary will conduct this review and will contact the responsible officer to do a comprehensive review of the discovery to ensure that nothing is missing. This Discovery Obligation Review should be conducted shortly after the setting of a trial date so as to make any missing discovery items available as soon as possible. A Discovery Obligation Review form should be utilized. In the event that additional discovery becomes available at a later time, we will immediately make the defense aware of its existence and promptly provide such discovery.

We recognize the importance of providing ample time for the defense to review and consider the evidence in full prior to a preliminary hearing, a trial (of any kind), or the entry of a plea. In the event that a defendant or defense counsel was unaware of or did not receive complete discovery with ample time for consideration, we will agree to continue any such hearing or trial.

The Box Elder County Attorney's Office maintains an "open file policy." Defendants and defense counsel are entitled to review all reports, evidence, and statements available to and in possession of the prosecutor. Staff will make reasonable accommodations for scheduling and reviewing evidence and discovery by appointment, if possible. There will be no charge to defendants or defense counsel who come to the Box Elder County Attorney's Office to review discovery, including videos and photos.

Due to the exorbitant expense of storing and maintaining discovery files electronically, the Box Elder County Attorney's Office recognizes the need to recuperate these costs to the extent possible. Accordingly, we will timely notify a defendant and/or defense counsel about the total cost of the requested discovery. In accordance with Box Elder County Resolution No. 21-03, the Box Elder County Attorney's Office will assess discovery fees as follows:

REPORTS, DOCUMENTS, AND WRITTEN STATEMENTS

Electronic delivery	\$5.00
25 or less pages <i>printed</i>	\$10.00
More than 25 pages <i>printed</i>	\$25.00 and up
Per page >25 pages <i>printed</i>	5¢ per page (B&W) 10¢ per page (Color)
Citation (with notes)	Free

MEDIA

CD or DVD	\$5.00/disc
USB flash drive	\$10.00/drive

PLEA BARGAINS

Although no defendant is entitled to a plea deal, it is the policy of the Box Elder County Attorney's Office to make reasonable plea deals whenever possible for the sake of judicial economy, allocation of resources, and in the interest of justice. Nevertheless, it is the prerogative of each prosecutor to exercise their discretion as they see appropriate, given the individual circumstances and facts of a particular case. In determining whether to offer a plea deal or the terms of any such deal, a prosecutor should specifically consider the following:

- (1) the desires of any victim(s) in the case;
- (2) the safety of victims, witnesses, and the community;
- (3) restitution for victims;
- (4) the opportunity and amenability for rehabilitation of the defendant;
- (5) the defendant's prior opportunity for and engagement in rehabilitation programs;
- (6) the defendant's prior probation or parole history;
- (7) the criminal history of the defendant;
- (8) cooperation by the defendant in resolving other criminal cases against the defendant;
- (9) the defendant's willingness to assist in criminal cases against other defendants; and
- (10) any other applicable and appropriate aggravating or mitigating factors.

PLEA BARGAIN SENTENCING RECOMMENDATIONS

A prosecutor should avoid making sentencing recommendations as part of a plea deal, unless there is good cause or such a recommendation is critical to facilitating a deal. Sentencing recommendations as part of a plea deal should be avoided where possible for at least three reasons. First, the prosecutor is part of the executive branch and sentencing is a function of the judicial branch. It is the experience of the Box Elder County Attorney's Office that making sentencing recommendations as part of a plea deal have a powerful effect on the judge and, in some cases, may unduly influence a judge facing pressure for judicial economy. Second, in rare cases where a judge does not follow an agreed upon sentencing recommendation, it tends to strain relationships between prosecutors and defense attorneys and complicate future plea deals

by creating uncertainty. Third, as it pertains to District Court cases, the prosecutor will typically not have the benefit of the comprehensive information contained in a presentence report (i.e. sentencing matrices, criminal history, family/education/work background, supervision history, and risk assessment) that should have a bearing on the ultimate sentence. As such, any sentencing recommendation will inevitably lack a full understanding of relevant factors.

Notwithstanding the general guideline against plea bargain sentencing recommendations, a sentencing recommendation may be utilized regularly to assist in resolving traffic violations. The concerns explained above are usually not present or as pronounced in cases involving traffic violations because such cases are typically not as severe as other offenses and generally only involve a fine. With limited options for plea bargains in traffic offense cases, a sentencing recommendation involving a fine may be the only option available.

PLEAS IN ABEYANCE

A prosecutors may, in his or her discretion, use plea in abeyance agreements where appropriate. In addition to the plea bargain factors explained above, prosecutors should be cognizant of the effect a plea in abeyance may have for future enhancement of an offense if the agreement ultimately results in a dismissal. If a plea in abeyance is utilized, the prosecutor will ensure compliance with Title 77, Chapter 2a of the Utah Code.

When possible, for any domestic violence offense, the prosecutor must work with the victim advocate to contact and receive input from the victim before agreeing to a plea in abeyance. The prosecutor or victim advocate should clearly explain to the victim what a plea in abeyance is, how it works, and what the potential outcome will be if successful or unsuccessful.

Due to the availability of the Drug Court program, a plea in abeyance should typically not be used in District Court cases involving drug offenses. A plea in abeyance for a drug offense may be used for a first-time offense on a misdemeanor charge in the Justice Court. In general, a plea in abeyance should not be offered for a subsequent offense on a misdemeanor charge in the Justice Court. However, this decision is ultimately left to the prosecutor's discretion when considering the specific facts of a particular case.

DIVERSION AGREEMENTS

The Box Elder County Attorney's Office does not utilize pretrial diversion agreements, except in rare and extraordinary circumstances. If a diversion agreement is utilized, the prosecutor will ensure compliance with Utah Code §§ 77-2-5 through 77-2-9.

RESTORATIVE JUSTICE PROGRAMS

The Box Elder County Attorney's Office is a partner in the First District Drug Court and Mental Health Court programs. In cases involving drug offenses or offenses that were committed as a result of drug abuse, and at the request of a defendant, a defense attorney, or the prosecutor, a referral to be screened for Drug Court should be made if it appears that the offender may potentially qualify for the program requirements. In cases involving conduct that appears to be caused primarily by mental illness, and at the request of a defendant, a defense attorney, or the prosecutor, a referral to be screened for Mental Health Court should be made if it appears that the offender may potentially qualify for the program requirements.

Entry into the Drug or Mental Health Court is typically accomplished through a standard plea in abeyance agreement. However, a prosecutor may, at his or her discretion, offer entry into the Drug Court or Mental Health Court program only as a condition of probation (rather than as a plea in abeyance) if, after considering the gravity of the offense(s), the defendant's criminal history, any victim input (including restitution requests), the prosecutor determines that it would be in the interests of justice to do so. As part of any Drug Court or Mental Health Court agreement, the prosecutor should include payment of any restitution as a condition of participation and successful completion of the program.

The Box Elder County Attorney's Office also supports local government agencies, state and private probation offices, and other local private providers of substance abuse and mental health services. Prosecutors should be familiar with all available programs and should be willing to make referrals and to include these programs in plea deals, when and where appropriate.

SENTENCING AND JUVENILE ADJUDICATION

The prosecutor should zealously advocate for a sentence that is fair, in accordance with any plea agreement, and that is consistent with other similar cases or co-defendants.

The Box Elder County Attorney's Office recognizes that incarceration serves legitimate purposes of: helping deter future crime, helping defendants to detoxify from substances or alcohol, ensuring the health and safety of victims and the defendant, and imposing a punitive consequence. However, the Box Elder County Attorney's Office also recognizes that any period of incarceration also has the potential to significantly disrupt a defendant's work, family, and life. As such, when determining whether to advocate for any period of incarceration, the prosecutor should carefully consider the delicate balance between the potential value of incarceration and the hindrance incarceration may cause for a defendant. In order to protect and preserve a defendant's constitutional rights, a prosecutor should never advocate for any sentence for purposes of retaliation which includes, but is not limited to, the defense requesting a preliminary hearing, filing a motion, or requesting a trial.

The prosecutor should be familiar with relevant sentencing laws, rules, consequences, and options for sentencing and adjudication of juvenile cases. The prosecutor should seek to assure that a fair and informed sentencing judgment is made and should not advocate for an unfair or disparate sentence.

The prosecutor should know and understand the relevant laws and rules regarding victims' rights. The prosecutor should encourage and facilitate victim participation in the sentencing process as the law requires or permits.

The prosecutor should assist the court in obtaining complete and accurate information for use in sentencing, and should cooperate fully with any presentence investigations. The prosecutor should provide any information that the prosecution believes is relevant to sentencing to the court and to defense counsel. If incompleteness or inaccuracy of material information in a presentence report comes to the prosecutor's attention, the prosecutor should take steps to present the complete and correct information to the court and defense counsel. The prosecutor should disclose to the defense at or before the sentencing, all known information that tends to mitigate the sentence.

In offering sentencing recommendations to the court, the prosecutor should first rely on any promises made in a negotiated plea agreement and should not withdraw any promises without a court first making a finding that the defendant has materially violated the agreement.

The severity of a sentence, plea bargains obtained, or the rate of conviction at trial should never be used as a measure of a prosecutor's effectiveness or merit.

COLLECTION OF FINES & FEES

The Box Elder County Attorney's Office does not collect court fines or fees. The imposition and collection of fines and fees is the prerogative of the courts. When a probationer has been ordered to pay a fine or restitution and fails to comply, the prosecutor shall act to assist the courts in the collection of the fine or restitution. If a defendant has failed to pay restitution in full, the prosecutor should not agree to successfully terminate probation, even if the probation agency makes such a recommendation.

If a defendant entered into a plea in abeyance which required the payment of a fee, a defendant will not be entitled to the benefit of the agreement until the fee is paid in full unless, in the prosecutor's discretion, the defendant experiences an extreme undue hardship that justifies an agreement to change the terms of the plea in abeyance.

The imposition of fines and fees can be tools to help deter future offenses and can be considered by the prosecutor and used as such. However, a prosecutor should give no consideration about

securing revenue for the court or the county from the collection of fines or fees as part of any prosecution, plea negotiation, or resolution in any case.

EARLY/SUCCESSFUL TERMINATION OF PROBATION

The Box Elder County Attorney's Office will promptly consider and respond to requests for early and successful termination of probation. Upon receipt of a request, the County Attorney's Office will make reasonable efforts to notify any victims and seek their input on the request. In reviewing these requests, the following factors will be considered:

- The facts and circumstances of the crime which resulted in the defendant's probation, including both mitigating and aggravating facts.
- Any input from the victim.
- The length of time the defendant was ordered by the court to be on supervised probation, and the time the defendant has actually been on supervised probation, taking into account any revocations and restarts.
- The probation history of the defendant, including both violations committed and incentives received during the current supervision.
- If the crime or conduct leading up to the crime involved any substance abuse, the number of random tests which the defendant has received and/or the amount of time that the defendant has remained clean. In most cases involving drugs, the defendant should have at least one year of clean time before probation should be terminated early.
- Any conditions of probation which have not been satisfied, including the payment of restitution, fines and fees. As a general rule, all restitution and fines must be paid in full in order for a defendant to obtain a successful termination of probation. With respect to unpaid supervision fees, if the supervising agency is willing to waive or turn those unpaid fees over to collection, this should not be the sole basis for denying a request.

EXPUNGEMENTS & 402 MOTIONS

The Box Elder County Attorney's Office will promptly respond to any motion for expungement or a reduction of charge pursuant to Utah Code Ann. §76-3-402. However, if the case involved a victim, we will wait 30 days before responding to the motion to provide the victim an opportunity to respond. We will immediately provide notice to the victim about any request for expungement or reduction of charges. Included with the notice, we will provide clear instructions for the victim about how to object and contest the defendant's motion. If the victim has not contacted the Box Elder County Attorney's Office within 30 days after sending notice, if otherwise appropriate, the responsible prosecutor should not delay in waiving a hearing and consenting to the defendant's motion.

For all two-step reductions pursuant to Utah Code Ann. § 76-3-402(3), the defendant must demonstrate that extraordinary and unusual circumstances exist that justify such a reduction.

CRIMINAL & CIVIL FORFEITURE

The Box Elder County Attorney's Office uses criminal and civil forfeiture as an effective tool in preventing further criminal conduct and ensuring that criminal actors do not benefit from the proceeds of their crimes. Accordingly, when a police agency submits a request to forfeit property, the attorney assigned to handle forfeitures will only seek a forfeiture of property if the prosecutor has sufficient evidence to prove that the property was used to commit a crime or is proceeds from the commission of a crime, as set forth in section 24-4-101 *et. al.* of the Utah Code.

In general, the Box Elder County Attorney's Office will seek a civil forfeiture. However, it is the prerogative of the prosecutor to seek forfeiture through a criminal case instead, if so desired.